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ABSTRACT

In 1972, the District of Columbia Advisory Committee initiated an inquiry to determine the role that discrimination has played in limiting minority business enterprises in the Washington area. Meetings were held in which businessmen, representatives of technical assistance organizations, government officials, and bankers examined the question of whether, or to what degree, minority businessmen are denied loans, loan guarantees, and other forms of credit by the traditional money markets because of race. This report summarizes information obtained through interviews and from presentations during the open and closed meetings. Discussed are criteria for determining bank loans, minority businessmen's views of banks and the Small Business Administration (SBA), and the views of technical assistance personnel toward banks and the SBA. Bankers' responses to criticism levelled against their institutions are also presented. Approaches taken in various cities toward solving the financial difficulties of minority businessmen are outlined, as are legal approaches to the problem of discrimination in lending. The Advisory Committee's recommendations for preventing further discrimination are presented. Appended to the report are a petition directed toward Federal regulatory agencies, letters from District of Columbia banks regarding their lending policies, and statistical data on loans granted to black and Hispanic businessmen. (GC)

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OBSTACLES TO FINANCING

MINORITY ENTERPRISES

A Report of the District of Columbia Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission.

January 1974

UD019963

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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PREFACE

The United States Commission on Civil Rights created by the Civil Rights Act of 1957 is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the Act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

The State Advisory Committees

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

Recommendations to the United States Commission on Civil Rights

This report has been prepared for submission to the U. S. Commission on Civil Rights by the District of Columbia Advisory Committee. The conclusions and recommendations in this report are those of the Advisory Committee and are based upon evaluation of information received from staff and Advisory Committee investigations at closed meetings held April 18 and May 12, and its two day open meeting on October 12 and 13, 1972. This report has been received by the Commission and will be considered by it in making its reports and recommendations to the President and Congress.

ATTRIBUTION

The findings and recommendations contained in this report are those of the District of Columbia State Advisory Committee to the U. S. Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

Prior to the publication of a report, State Advisory Committees afford to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses received have been incorporated, addended, or otherwise reflected in the publication.

TABLE OF CONTENTS

PREFACE..... II

INTRODUCTION..... 1

ECONOMIC OVERVIEW..... 3

MINORITY BUSINESSMEN'S VIEWS OF BANKS..... 6

MINORITY BUSINESSMEN'S VIEWS OF SBA..... 9

TECHNICAL ASSISTANCE REPRESENTATIVES..... 11

THE BANKERS' RESPONSE..... 20

AFFIRMATIVE APPROACHES..... 29

REMEDIES: LEGAL ANALYSIS..... 34

FINDINGS AND RECOMMENDATIONS..... 46

APPENDICES..... 50

INTRODUCTION

Private entrepreneurship historically has been one of the paths to full participation in our free enterprise system. But blacks and Spanish surnamed persons, who constitute a majority of the population of the District of Columbia, own fewer than 10 percent of the city's businesses. It is for this reason that the District of Columbia Advisory Committee to the U. S. Commission on Civil Rights initiated an inquiry to determine to what extent discrimination has played a part in limiting minority business enterprises.

In carrying out its investigation, the Advisory Committee held two closed meetings at which it heard from a number of minority businessmen and representatives of technical assistance organizations, concerning entrepreneurship in the District of Columbia. These witnesses assisted the Advisory Committee in analyzing the issue considered in this study: whether or to what extent minority businessmen are denied loans, loan guarantees, or other forms of credit by the traditional money markets because of race.

The Committee is aware that there are many reasons why minority businessmen are not participating equitably in the operation of business enterprises within the District of Columbia. But as the Committee was told, a major problem is the lack of equity and debt capital necessary to operate on a level enabling them to maintain economic growth and development.

Traditionally, banking institutions have applied what are generally known as the 3 C's of credit -- credit, character, and

capacity -- as the criteria for extending business loans. The validity of these criteria was one of the issues focused on by witnesses who appeared before the Advisory Committee.

Further, it has been generally accepted that all Americans have a right to ownership of land, and a right to free access to the job markets, both public and private. Equal housing and equal employment opportunity legislation have been enacted to insure these rights, but equal access to loans or the economic benefits of business ownership have not been precisely legislated. As economics know, without reasonable access to land, labor, and capital it is almost impossible to develop viable business enterprises or to participate fully in the free enterprise system. If individuals are unable to participate therein because of race, they are thereby denied a substantial civil right.

On October 12 and 13, 1972, the Advisory Committee held a two-day public hearing in Washington, D. C. to which it invited government officials, owners of businesses, representatives of technical assistance organizations, and bankers. Twenty-nine witnesses appeared before the Committee.

This report summarizes the information obtained through interviews and the information presented during the open and closed meetings. The conclusions and recommendations drawn from this information by the Advisory Committee are presented in the hope that they will lead to remedial action in an area which is receiving increasing attention.

ECONOMIC OVERVIEW

The District of Columbia Advisory Committee believes that successful minority businessmen in the District will add to the strength of the local economy. However, the Advisory Committee realizes that there are many other factors besides finance that determine a businessman's success, and that there are many determinants regarding the stability of the District's economy.

Minority businessmen operating in the District have experienced many difficulties and there are many reasons for these difficulties. Philip Hammer, an economist who has studied the economic growth potential of Washington, D. C. gave the Committee an economic overview of the Washington area and its implications for new businessmen in Washington:

> Entrepreneurial opportunities within the city, measured by the number of establishments, have been disappearing at an alarming rate. Instead of broadening our base of new enterprises to take advantage of the rapid expansion of this region and to provide new opportunities for our heavily minority population that has long been denied access to full participation in the economic system, we have been shutting the doors almost daily.

Mr. Hammer said that there are three factors primarily responsible for the economy's decline in the District of Columbia:

1. The absence of a substantial manufacturing base in the Washington metropolitan area;

2. The presence of strong centrifugal forces that are prying loose the central area's business structure;

3. The sharp competition for the kinds of local jobs that offer entrepreneurial possibilities.

The trends in District business have not been encouraging. According to Mr. Hammer, only 3.6 percent of the metropolitan Washington's employment, representing about 44,000 workers, was in manufacturing in 1970. It is the lowest proportion of any metropolitan area in the United States. Furthermore, capital for new and expanded business enterprises is flowing predominantly to the suburbs.

However, Mr. Hammer said that he felt that there were opportunities for new business development -- specifically new minority business development. He cited the following reasons:

1. The District has a $2 billion economy measured in terms of personal income -- which means that it has a consumer capacity to support business and commercial activities.

2. The District is predominantly a city of strong neighborhood and commercial districts fully capable of attracting additional investments and generating new enterprises.

3. The disadvantaged areas within the District are areas of new business potential, offering major opportunities for redevelopment.

4. The Federal Government, the District's major employer, is permanently rooted in the central city and will continue to provide a tremendous employment base for the central city economy.

5. The dispersal of many types of enterprises to the suburbs has created major voids in the business structure serving the District. In many activities, the District is in short supply which offers opportunities for new development.

Mr. Hammer said there are also prospects for new development offered by the construction of the subway underway by the Washington Metropolitan Area Transit Authority, and the activities related to the nation's Bicentennial. Hundreds of millions of dollars will be spent on physical facilities and improvement. The opportunities, therefore, outweigh the disabilities, according to Mr. Hammer.

Mr. Hammer concluded:

> We have done no more than scratch the surface in exploring new ways of owning, financing, and operating private businesses within a revised urban renewal framework. But we do not have to wait for these developments in order to expand minority enterprise in the District. I think the potentials are out there and strong efforts can reverse the negative trends of the past two decades.

According to Mr. Hammer, minority businessmen face solid opportunities in the District of Columbia but have also faced severe problems in the past owing to the movement to the suburbs. Moreover, minority businessmen have also faced inherent disadvantages in their efforts to attract the equity and working capital which they need to survive and prosper.

The traditional criteria for determining bank loans are tailored to the white businessman with his years of experience as an entrepreneur. These principles often handicap minority businessmen, because many do not have a formal education, lack substantial savings, and lack contacts in the business world. Yet, they are the crucial entrepreneurs who will determine in large measure the economic future of the District of Columbia.

MINORITY BUSINESSMEN'S VIEWS OF BANKS

One aspect of the open meeting was concerned with how minority businessmen in the District perceive their problems of finance, and their relationships with banking institutions and the Small Business Administration (SBA) and the Economic Development Administration (EDA).

Although minority businessmen expressed a variety of opinions concerning the willingness of District banks to loan them money, most felt that the attitude of bankers was essentially negative.

Edward B. McLean, Executive Vice President of the A. E. McLean Company, an office supply and equipment company, identified some of the difficulties he encountered in obtaining a bank loan. He told the Committee:

> We were making monthly deposits of $12,000 . . . When we made a small request for a signature loan for $2,000, . . . the loan officer at that branch politely told us that he could not accept a loan of that type for business purposes. . .. We were alarmed at that time that we were turned down for a signature loan for so small an amount, so as a further test, our President, Mr. Al McLean, went to another branch and applied for an automobile loan for a car that would have cost in excess of this, with the very same personal financial data. And that was accepted virtually on the spot.

A contrary view was expressed by a minority businessman who had been in business for 20 years. It was his opinion that there are discriminatory practices, but if a minority group member can qualify, he will not have any difficulty getting funds with which to finance a business. At the same time, he also explained that "Washington doesn't have a large commercial community, and the banks aren't geared toward commercial loans". Thus, the lack of the availability of small business loans, and subsequently, loans to minority businessmen are due, in part, to the conservatism this situation creates.

The exclusion of minorities from the business world and their resulting lack of expertise in the area was also felt to adversely affect their ability to apply for and receive loans. As Roger Blunt, President of the Tyroc Construction Company testified, " . . . the black businessman doesn't know where to start, because he has been excluded from traditional banking institutions for so many years.

Mr. Blunt also stated:

> In all fairness, one cannot go in off the street and say to a bank, 'I need X dollars', without developing a viable plan. And quite often when someone comes in and says, 'give me working capital, give me a line of credit,' he doesn't have anything to back it up. But there are many instances in town where /black/ people have had as much as the next man, and he hasn't been allowed even to present /his/ case.

This latter point, as well as complaints of red tape preventing a loan from going through, were repeated several times during the open meeting. Mr. Blunt observed, "the typical internal bank policies have precluded a sincere banking interest with minority businesses."

Joe B. Willis, President of Alpha Omega Brick Construction Company, supported the above point of view as he described his attempt to secure a loan:

> It was always something. Not having the right paper at the right time, not making the right decision. The loan officer would always have some excuses in terms of giving you a decision -- the Board has to meet and make the decision. It was always a hangup. So at the same time what is happening? Business is dying.

Cornelius Pitts, owner of Pitts Motor Hotel and a businessman for more than 20 years, added support to Mr. Willis' statement. Pitts indicated that when blacks applied for loans, the banks would try to reduce the amount requested: "If we asked for five thousand

dollars, the banker would say, can you make it with twenty-five hundred? And, of course, to any man -- a half loaf is better than no loaf at all. So the average businessman would say,'yes I think I can,'knowing full well that that wasn't enough, and it was probably just enough to ensure his failure."

Witnesses testified that they had the same problems obtaining loans at most banks in the District. Robert Adkins, President of IBC, Incorporated, stated that he owned the only black-owned office machine repair firm in the country and that he had obtained $30,000 in signed government contracts for maintenance and repair work. He then sought a loan to provide enough working capital to substain operations for those contracts. According to Mr. Adkins, he tried every major bank in Washington and was turned down by each.

MINORITY BUSINESSMEN'S VIEWS OF SBA

The minority businessmen who testified at the open meeting were also critical of the Small Business Administration. Robert Adkins said that he had started his business in September 1970 and made his first contact with SBA at that time. Despite the $30,000 in signed government contracts which he had, Adkins testified that he could not get a working capital loan to sustain his operation for those contracts and for additional working capital.

Further, he stated that he had made approximately 124 visits to the Washington Office, and National Office of the Small Business Administration. He said that he currently had $177,000 in signed contracts and still had not been able to get a loan.

Other minority businessmen testified to similar experiences with the Small Business Administration. Edward McLean complained that "there is an excessive amount of paper work involved in obtaining an SBA loan." He noted:

> We began negotiation on this /SBA loan/ in August of 1971. The package was not completed until February of 1972. Now, during that time it was obvious that when we applied we had a need for financing. I think if we had been a smaller company -- I think this happens to a lot of companies -- if we were not in a fairly strong position, we would have gone under in the period we were waiting for the financing.

When Cornelius Pitts was asked about the difficulty in obtaining a major loan through SBA, he responded:

> We won't go into the problems, but the last time around, it took me eight months to get it. There again, the average businessman applies for a loan

> . . . he needs the loan yesterday. Okay, he applies, but it just takes too long. By the time the SBA makes up its mind to do something, the man could be long out of business.

Mr. Blunt pointed to the bureaucratic problems inherent in SBA and the Economic Development Administration. Organizations such as these, he said, take so long to respond that a businessman cannot get the kind of support he needs when his company is in trouble.

Minority businessmen were also critical of SBA's inability to provide the amount of money the minority businessman needs.

Mr. McLean said that the maximum amount he could borrow from SBA in 1967-68 was $6,000. At that time, he said, his needs were already in excess of that amount. A few years later, according to Mr. McLean, SBA was still unable to loan him the amount he needed.

Mr. Pitts observed that SBA would make loans to newcomers in business faster than it would to established persons "who have had experience and presumably know something about what they are doing."

TECHNICAL ASSISTANCE REPRESENTATIVE

Views of Banks and SBA

Several business development organizations in the Washington, D. C. area provide technical assistance to minority businessmen. Representatives of these organizations gave testimony at the open meeting which corroborated the views of minority businessmen. They expressed ambivalent feelings towards SBA and EDA, saying that although these institutions have been of great service to minority businessmen, they provide financial assistance that is different in many ways from that accessible to white businessman through private sector financing.

Their major criticisms of lending institutions included the following:

1. That criteria for extending loans to minority business are inherently discriminatory.
2. That processing of a loan for a minority business is often directed toward a special minority loan officer as opposed to the regular loan officer available to majority businessmen.
3. That banks have established quotas for minority business loans.
4. That banks often limit their participation in minority business financing to loans that are guaranteed by SBA. These loans require an extensive period of time to process and frequently limit the growth of business for the duration of the loan.

William Jameson, Executive Director of the Interracial Council for Business Opportunity in Greater Washington (ICBO), summed up the criticisms minority businessmen have against lending institutions in

the District of Columbia:

> Any minority that walked into this particular bank was assigned a particular officer who was their minority representative. He dealt with nothing but minorities, and it was all SBA guarantees. There were very few direct loans that a minority or a black man could receive. Then the banks began setting limits as to the amount of money they would make available to minorities.. . . The black aspirants have increased their capability and experience and the capital that they have available, while banks are maintaining their particular stand that the black businessman has very little experience going into business; the business is entirely different than the normal business that the banks have been dealing with.

Criteria for Extending Loans

The criteria used by banks to extend loans, (credit, character, capability), are applied to all loan applicants. However, minority businessmen and the technical assistance organizations that represent them claim that these criteria are inherently discriminatory. Darryl Hill, Executive Director of the Metropolitan Washington Business Resource Center, explained how the three C's operate against the minority businessman:

> Giving the banks the benefit of the doubt, I would say that if they don't discriminate, their requirements do.. . . The Federal requirements for the minority businessman discriminate against him by their very nature, initially. Banks are looking for a long line of business and corporate experience on the part of the applicant. They want to know how long he's been in business, was his father in it. Obviously, blacks and other minorities don't have this long line of experience behind them.
>
> They are discriminated against . . . on a credit basis. If a minority has been in business for any length of time, and I come from a family that has

> owned and operated a business some forty years, his credit is in a shambles, and the main reason for it is that he hasn't been able to go through the established institutions to borrow money. Therefore, he's had to take the devious routes which all of us are familiar with to borrow money.. . . The banks need to look at a credit report from an analysis position as to why the credit was bad. Is the individual a victim of circumstances, or is he just a bad credit risk?
>
> The third thing is the requirements for equity capital and other types of security and collateral behind the loan that generally isn't available to a minority applicant. So when one walks in, the banks say, we don't discriminate, but they stick a set of criteria in front of you which does.

Mr. Hill described how investment bankers evaluate the criteria for extending loans to minority businessmen.

> An investment banker will tell you quickly that a black entrepreneur has too much going against him. He will say, I sympathize with him, but the facts of life are that he has too much going against him for us to put a million dollars straight out with no security. That's what investment banking is all about. It may or may not be right. Maybe he does have a lot going for him if you really look at him. But I turn around to him and say, you're one of the things going against him.

While the criteria for extending loans are generally applied uniformly, one bank will refuse a loan while another will accept it.

Michael Wallach, President of the Washington Business Development Center, finds this problem one which he must deal with when seeking loans for minority businesses: "One bank has approved a loan; another bank has turned down the same loan. The same package, the same person. Just taken from one and brought to the other. And one approves it and one turns it down."

Clearly, the minority businessman and technical assistance organizations feel they are not receiving fair and equitable treatment from lending institutions, yet to call it discrimination is a difficult charge to substantiate. This observation was made by Clifford Henry, Vice President of the National Council on Equal Business Opportunity:

> It is a difficult problem, obviously, because there are many different kinds of standards and criteria which banks make decisions on with respect to the feasibility of different packages.
>
> So, one might conclude that this is probably one of the most difficult areas of discrimination to really address. There are so many variables with respect to the decision making process in the substance on which the banks make a decision.

Quotas

Many witnesses testified that banks established dollar quotas for minority businessmen and when the quotas are reached, no further loans are made. Furthermore, witnesses testified that banks prefer to participate in an SBA loan guarantee because the Federal Government will guarantee 90 percent of the loan, leaving the bank only 10 percent exposure. When a bank exposes 10 percent of the total dollar amount of the loan, it deducts the entire dollar amount from its quota.

Mr. Hill insisted that there are bank quotas:

> Banks do have quotas. They earmark X dollars for minority loans, period. . . . They will tell you very simply in answer to a telephone call, sorry we've reached our limit, plus we've got one black guy that's kind of shaky, we might have to call for our guarantee.

Mr. Jameson stated his position on quotas for minority businessmen and the exposure of loan dollars:

> Banks in themselves should not have a loan limit as to the amount of money that they would make available to minorities. Several of the banks have told me that they have $500,000 per year set aside for minorities. . . . Now if they (banking institutions) are going to set their limits on the amount of money available, then their limits should be predicated on a ten percent exposure rather than on the total amount of the loan. If they are going to have a $500,000 criteria limit for minorities that they are going to lend money to in a particular year, then it should be $50,000 for the ten percent exposure, rather than $500,000 total.

Minority Loan Officers

According to a number of witnesses, a minority businessman who applies for a loan is often directed to a minority loan officer to handle his package. He therefore does not deal initially with any of the several bank loan officers available to majority businessmen.

Banks and SBA

Many of the witnesses from technical assistance organizations said that while banks will approve a 90 percent guaranteed SBA loan to a minority business, they are extremely reluctant to extend lines of credit and ordinary loans to the same business when there is no guarantee. These representatives also criticized both SBA and the banks because they require a cumbersome, lengthy application process -- one that meets legislative requirements, but not necessarily growth factors. As one witness testified:

> Bureaucracy and business don't mix. Some of the bureaucratic constraints that are placed upon the issuance of a loan do indeed hinder

> the growth of that particular business. There's no question about it. Because SBA is not looking at the marketing potential, it's looking at, okay now what happens in the event of a failure. We've dotted our I's and we've crossed our T's, now are we safe, in terms of did we follow the procedures set out by Congress.

One witness from a technical assistance organization stated strongly that SBA loans were detrimental to the development of minority businesses:

> So you can see that the banks aren't doing anyone a great favor by taking SBA guarantees for 90 percent. . . . The Small Business Administration does burden the bank considerably with paperwork. A million dollar loan to General Foods takes about three minutes to close over the phone, and it doesn't have to be administered, and there's no installment payment coming in every month, and they don't have to write any collection letters, et cetera, et cetera. Granted the banks acted in this area because of the 90 percent guarantees, but what about the other areas, other lines of credit that are almost totally unavailable to black businessmen? What about the floor plans, which are almost totally unavailable to black businesses; what about counterbalance loans which they haven't done. These are the business devices that the sophisticated black client needs. . . . SBA, is a dead-end street for any entrepreneur. Why? If the Small Business Administration is on your balance sheet on the liability side, either with a direct loan or a guarantee, it's next to impossible to garner any additional financing until they are paid out.

The same problem was restated by another witness:

> There are very few direct loans banks have made to minorities. I would agree that they should do it without SBA guarantee. The SBA was set up to provide leverage for softer loans. It wasn't put up for black folks only, and that's what the banks have been using it as.

Finally, Benjamin Goldstein, President of the National Council of Equal Business Opportunity (NCEBO), summed up the banking activity in the District with regard to the minority businessman:

> Without singling out any individual bank, I think the records of SBA. . . would indicate that the banks in Washington have done among the poorest jobs of all banks in any major city. . . . The bank situation here has been particularly bad and it is hard to know whether it is getting better. They have been cooperating recently, particularly with our organization (NCEBO) in developing a MESBIC. . . . But, in our view, this is no real substitute for the banks doing what they ought to be doing directly with prospective businessmen or owners of existing businesses.

However, it cannot be denied that SBA's services have been useful. As one witness stated:

> I can't see the banking industry being particularly interested in minority business development in the Washington area or the city without some type of guarantee program.

One of the witnesses at the hearing was James Hall, a Fellow at the University of Pennsylvania's Wharton School of Finance, who worked at the SBA in Washington during the summer of 1972 collecting and analyzing data concerning SBA's relationship with minority businessmen.

Mr. Hall related his findings concerning the 7-A (SBA's regular loan program) and Equal Opportunity Loans (EOL) programs of SBA.

> We have seen in all programs of interest, mainly 7-A and EOL, that the numbers of these loans had increased over the years but the dollar value has decreased proportionately to the total. . . . Contrary to what the bankers have been saying, records are kept as to what kind of people are making these loans. The government has a record. It's coded in numerical order from zero to seven. Code 00 is black; code 03 is Spanish American.

To illustrate that the percentage of SBA loans to minority businessmen was decreasing, Mr. Hall said that in fiscal year 1970, 41 percent of all SBA loans went to minority businessmen (23 percent of the total dollar amount), but in 1972, 32 percent was made to minority businessmen which was 16 percent of SBA's total funding.

In a letter to the Advisory Committee dated February 5, 1973, Director of the SBA Washington District Office Winford Smith reported that the number of SBA loans made to minorities had been slowly declining over the past several years despite intensified efforts to identify and assist minority entrepreneurs. This had occurred, he said, because District Office serves the entire metropolitan area, and economic growth has been generally more rapid in the largely white suburbs surrounding the District of Columbia than in the District itself.

Mr. Smith said that there were discernible differences in the willingness of some District banks to make SBA loans but that generally speaking, the attitude was positive. When asked if the use by banks of the three C's of credit was a valid criteria for the evaluation of minority businessmen, he stated:

> Yes, all of our efforts in minority enterprise assistance are directed to make the minority business competitive in its field. He should consequently be measured by the same standards as his competitors.

Other Programs

The technical assistance witnesses were also critical of other programs that offered financial assistance to minority businessmen.

One witness testified about EDA's time-consuming procedures:

> Unfortunately, I have to view many of the Federal lending programs as a last resort. . . . If we package a very large deal that does require five, six, seven, eight hundred thousand dollars, we will go to EDA or other agencies as a last resort, knowing that, again, their legal structure and their legislation demands that much more time go by before anything can be approved. Therefore. we will either hit the banks here in D.C., or we will then try banks out of state.

THE BANKERS' RESPONSE

The Advisory Committee heard testimony from the representatives of nine banks, and two other banks submitted documents in response to a letter from the Advisory Committee asking for specific information. (See Appendix for the Committee's letter of inquiry and the responses.)

The banks generally indicated interest and concern about the problems of the small businessman in the District of Columbia, but as Robert Koontz, President of the Security National Bank, testified in answer to a question about the need to "establish additional criteria" in lending policies for minority enterprises:

> I really don't see, as a banker that I could afford to change the criteria to any great degree. I think the SBA with its promise of a 90 percent guarantee . . . provides a leverage. We have our principal responsibility to our stockholders, depositors, and then of course to the community that we serve. It's still a profit-making organization, if you will, and we need to look at the overview of the entire thing.

This argument was supported by many bankers. For example, L. A. Jennings, Chairman of the Board at Riggs National Bank, testified:

> In making loans to all small business concerns, minority or not minority, we want to have a reasonable record of success in repayments. Now this doesn't mean that we tighten up to the point where there can't be any question about repayment. It means that when we make a loan to a small business-man we want to be reasonably sure he is going to succeed in that business. We accomplish nothing in my opinion by making loans to undercapitalized small companies, or one possibly that might be looked upon as having a reasonable amount of equity capital but where we have grave reservations regarding the ability of the owner

> to operate it successfully. We believe that when we make loans that result in failures on the part of the small business concern, it hurts that small business concern, and the small businessman in all probability more than it does our bank in having to charge off a small portion of a small loan.

Charles E. Daniel of the First National Bank of Washington stated his bank's position with respect to considering loan applications from small businessmen in these terms:

> I don't feel actually that we look at small businessmen. . . any different than a large businessman. The loan decisions made by the banks are primarily based on the condition of the business, somewhat on the worth of the business, as you imply, whether the business has a good chance for growth. There is no question about loans being placed on bank books being rated on some such scale like a school grade, you might say A through F. I think a bank should perform the mission of the bank, and must take some loans that you could rate fairly far down the rating scale, say a D loan or a C loan, with F being failing. A bank probably would not go into a loan knowing or feeling that it is his decision that this loan would fail. I don't know of any bank that could do that, keeping faith with its depositors and insurers, and the like.

Bankers testified that although they certainly want to make loans when basic criteria are met, some loan requests are prohibited by law. As one witness testified when questioned about innovative lending: "I can't be that innovative that I can provide equity capital on a long term basis."

Responding to a question about the ability of the traditional banking and financial institutions to meet the need for capital of minority businessmen, Mr. Jennings of Riggs National Bank explained:

> Really, we can't. Banks cannot buy equity capital in a small business. We can't buy equity capital in a big one, a corporation. We're prohibited from buying stock in any corporation. The MESBIC group, it will help. It is not the sole answer by any means. I think MESBIC, they look upon loans

> for small businessmen pretty much as we do. If it's a new business particularly, they are going to make a loan rather than buy equity capital in the business. Usually that loan provides at some future time that if the holder of the loan so desires to take an equity interest in part or all of the loan. But initally they make a loan. SBA makes loans. They are working capital loans, and sometimes when you look at the statement you say, yes, it's working capital loan but it comes mighty close to being capital. But nevertheless, it isn't capital, it's a loan. They are paying interest on the loan. The business is generating profits to pay the interest and the other expenses of that business. We do not have an institution in this country, and I think I'm right, that -- a governmental institution -- that is set up to make capital grants or purchases of equity capital in small businesses.

Another banker, in considering the same question stated:

> There are many factors when we consider a loan. You can't make them just because they are socially desirable. . . . You must also remember another thing that banks in the District of Columbia are subjected regularly to examination by the national bank examiners. They look at your bank very carefully and are quick to criticize if they deem criticism appropriate while evaluating your assets, particularly loans outstanding.

Notwithstanding the above considerations, banks are charged with making sound loans on a fair and equitable basis. In the early part of his testimony, Mr. Koontz, stated that his bank considered applications for credit after indicating that applicants are not identified by race or creed on the application form.

> Accordingly, our credit judgments are made and predicated upon the availability of funds, how they are to be used, where they are to be used, how they are to be repaid and when, applying the criterion that has stood the test of time, the three C's of credit: Character, capability and credit. Very frankly, while we make no distinctions as to race or creed in our lending policies, we do not make any special effort to lend to minorities per se. There is no special criteria established

> for considering minority loans. There are no funds allocated specifically for inner city loans. Our customers are served on the basis of first come, first served.

In the final analysis, then, whether or not a loan is made to a prospective businessman is based on a "credit judgment" arrived at by the banks' assessment of his business package and its feasibility in terms of its potential success and the businessman's ability to repay. The three C's of credit refers to those things which must be taken into consideration, credit, character, and capability. But what is the process by which these criteria are evaluated and what are significant variables that might be actionable? Perhaps most importantly, since this "judgment" must consider subjective as well as objective factors, what checks or controls are exercised by lending institutions to insure that minority businessmen are not discriminated against in the "credit judgment" process?

The Committee sought answers to these questions from other bankers. In response to an inquiry about whether the criteria for loans are "more strictly adhered to and standards set higher for minority businessmen", Mr. Jennings replied:

> No, on the contrary, and I mean this. When we're looking over a loan for a small businessman and we have confidence in his ability, and that's terribly important, we probably, well I'll say more often than not, we are less stringent, we give certain areas if we think we're dealing with the right kind of man who has ability than we would, let's say than in larger loans. We're risking more when we make a twenty-five or fifty thousand dollar loan. But when we're dealing with these bigger loans we're less likely to depart from the standards, some of which have been set forth here. When we deal with the small businessman, we

> depart from it frequently. Sometimes we make a mistake but sometimes in our judgment when we depart from it, the man has worked it out all right. There is no substitute for good management. If we think he's the man who will run his business well, we will depart from some of these standards.

Joseph Cassidy, Senior Vice President of the National Bank of Washington, was asked if he could suggest modified criteria for the evaluation of black businessmen. Mr. Cassidy replied: "Frankly, I hadn't given any thought to it before you mentioned it today. I think the three C's are applicable to any loan situation. . . ."

When pressed for a fuller consideration of this question, Mr. Cassidy said: "Well, I'd like to consider it. But I'm not presently going to come up with anything that would satisfy you. I just wouldn't want to off the top of my head. . . ."

The credit judgment required in the typical loan situation is both complicated and difficult. But the credit judgment required in extending lines of credit to minority businessmen appears to be even more so. Charles Daniels, President of the First National Bank of Washington explained the situation:

> A business should be out of the bank's debt usually for about one month of the year, one month out of twelve, where he is debt free. Now, if he goes beyond that, it becomes a term loan, you might say. He might borrow money for three years let's say, and that is not a line of credit. So I wanted to make sure we've got a frame of reference. A line of credit /based on credit worthiness/ is sometimes more difficult to give than a straight loan. . . . I am betting at the termination point of that commitment, that /in/ one year, that you will still be credit worthy for the total amount of the line. So my decision, my credit decision quite frequently is more difficult, you see, than on a straight loan that I might secure

> against inventory, receivables, business receivables and so forth. I think the line of credit basically, to attempt to answer your question straight on, is still a credit judgement just like the loan decision. It is a little tougher credit jundgement than the loan would be, and that is to any small business, minority or otherwise. It's a toughter judgement. Quite often we will try to get a small business where they need capital, working capital, to do it as a loan rather than a line of credit.

Since the decision to extend or refuse a loan involves an exercise of judgement and discretion, the Advisory Committee attempted to identify the process of making judgements and the procedures of reviewing. This was viewed as particularly important because minority businessmen and some representatives of technical assistance organizations had testified that they felt there had been abuses of discretion. They alleged that banks maintained a minority portfolio, that one individual usually administered this portfolio, and that ceilings were placed on the amount of loans.

All banks who testified categorically denied an abuse of discretion and asserted that all businessmen are dealt with fairly and objectively. Most bankers denied each of the specific allegations made by minority businessmen and representatives from technical assistance organizations.

In response to questions about the existence of quotas, Edward McConville, Senior Vice President of the First National Bank of Washington, said, "The First National Bank does not have such a quota." "There is no minority lending department of the bank. All loans are

judged on their merit irrespective of the race of the applicant."

He said the bank does not have one officer who handles only minority business loans, and explained:

> In the summer of 1969 we . . . formed a sort of ad hoc committee and announced in the paper that we were encouraging this kind of business, that is, applications from minority businesses that were operating in the District of Columbia. That certainly was not a minority officer, it was just an ad hoc committee designed to develop business.

In answer to a question concerning review procedures of bank officers, Mr. Daniels stated:

> Our branch officer at various branches would have a certain loan authority, the amount of money that they could loan. Now, within that authority admittedly, they may make or not make a loan. But our loans to a business of any size would probably first be seen by that branch officer, or directly to our commercial lending department, you see. And then if it gets a size larger it goes to a board, a committee of the Board of Directors for approval. There are various gradients as you can see from one side to another. But there's nothing in any of our forms or any of our discussions or any of our statements on policy that we have at the bank that would indicate there is any discrimination whatsoever. That's our basic procedure.

Asked about reviews of officers approving or disapproving loans, Mr. McConville replied:

> After a loan is made, a file is made up and it is reviewed by the commercial loan officer, and in many cases by myself. There is a review of every loan made in the bank. There is not a review of declined loans. I know what you're driving at. Many times a loan can be rejected and we don't know it. We try to police it. We have pretty open lines back and forth, but it can happen.

Asked whether the bank had a quota system, Mr. Cassidy responded:

> If anything, perhaps we might have the reverse of the quota system. We are making a special effort. We are trying to impress upon all of our officers

> and employees that there is an awareness that we have to help our community, and have to be especially sensitive to their loan requirements.

And asked how a loan is normally processed in-house, Mr. Cassidy answered:

> The applicant will speak to a loan officer who will try to develop his background, try to develop and evaluate his financial information that he has furnished, make a credit check, consider the purpose of the loan and how it is to be paid, and he will approve it if it is within his authority. If the amount is larger than the particular loan officer's authority, it will be referred up to somebody with a greater lending capacity, greater lending authority.

Mr. Cassidy denied that specific loan officers handle minority loans:

> Any loan officer handles any customer who comes in. We do have our SBA centered in one officer. This is for administrative convenience. There is a lot of paperwork involved in it. And in order to develop a skill at it, and in order to better control it, there is one man handling that. One man specializes in it, so that when any other loan officer determines that an SBA loan could be approved in any given situation, he will refer it to this officer.

A similar situation was described by Mr. Jennings of Riggs National Bank:

> As I said, whether they are minority or non-minority, to a small businessman, I want those denials to come on down to be seen by a senior lending manager. Now I don't see all of them. I see some of them. And I know they are looking at them. And I know our policy is to make loans if we believe that he can succeed.

In response to a question about quotas and a single minority loan officer, Mr. Donegan of Riggs bank replied:

> We do not have any quotas, nor do we have any single officer responsible for loans to minority businessmen. To the contrary, applications are received by

> any lending officer of the bank. In the case of SBA loans we do, and the larger business loans, they are referred to the commercial loan department where they may be assigned there to any one of several officers. But the application itself when it is prepared and ready for consideration, is considered by myself and other senior lending officers at the bank. If they are large enough they are presented to our officer's loan committee. But they are thoroughly reviewed, they are not dependent on the decision of any one man, other than some very small loans which may be applications that come in that may be within our lending officer's authority. As Mr. Jennings pointed out, however, we are very much interested in those loans which are declined, and our instructions, and they are firm instructions to our branches particularly, in the case of a business loan which is declined, we want to see the application, and before the answer is given to the applicant. But they are reviewed by senior management. In some cases those decisions are reversed.

In summary, the bankers present denied that they employed the use of quotas or minority loan officers. However, they indicated that it was more expedient for one officer to handle SBA loans because of the paperwork involved.

AFFIRMATIVE APPROACHES

There are several avenues towards finding solutions to the financial difficulties of minority businessmen.

Regulations which insure against discrimination by banking institutions are but one remedy. Innovative affirmative programs must be undertaken by the private and Federal sector if minority businessmen are to be dealt with in a realistic manner.

Several large city banks have instituted programs which deal affirmatively with the problems inherent in minority business development. John Gloster, President of the Opportunity Funding Corporation described a program undertaken by the Hyde Park Bank in Chicago, a relatively small bank which has made $4 million in minority business loans over the past three years with an excellent success record. Mr. Gloster explained:

> To do so, Hyde Park created a special unit within the bank staffed by experienced white lending officers, as well as blacks trained by the banks, who literally lived with their clients during the life of the loan. Despite the additional cost of this special unit, Hyde Park found that, while the return was slightly lower than on the remainder of its loan portfolio, it did in fact make money on its minority loans.

Mr. Gloster also told the Committee about a somewhat different program in Chicago. Several major banks in that city underwrote the operations of a highly competent technical assistance agency, the Chicago Economic Development Corp., and earmarked several million dollars for loans packaged and monitored by that agency.

According to Mr. Gloster, it was not accidental that these programs occurred in Chicago. Adlai Stevenson III, when Treasurer

of the State of Illinois, introduced a plan by which deposits of state funds were linked on a formula basis to the banks' performance in making inner-city loans. Mr. Gloster suggested, "This linked deposit plan might well be considered as an approach to be followed by the District and Federal Governments in making deposits in Washington banks."

He also described another model in Denver, Colorado:

> There, several of the city's leading banks absorb the salaries of key personnel of a technical assistance agency headed by a capable and aggressive Mexican-American CPA. . . . Like the Chicago Economic Development Corporation, the Colorado Economic Development Agency packages and monitors minority loans for those banks.

Mr. Gloster stated that the bank programs in Chicago and Denver came about in response to pressure from their respective communities. He said that he did not believe that the private sector would voluntarily spend money to initiate a program of that nature. In both cases the Federal Government was involved; the Chicago Economic Development Corporation received funds from both OMBE and Model Cities.

The Washington MESBIC

A MESBIC, (Minority Enterprise Small Business Investment Corporation) is a privately owned and federally regulated investment company. It provides equity capital and long term loans to minority businessmen.

A MESBIC is established when private investors put up a minimum of $150,000 in capital, incorporate as an investment company, and obtain a license to operate from the SBA. Once operating, it is eligible to borrow $2 from the SBA for every $1 of private

capital. These loans are in the form of low-cost 10 or 15 year subordinated debentures. These funds and the equity investment of the MESBIC "sponsors" are for "seed" capital investment in minority businesses, in the form of either long term loans (5 - 20 years) or equity. SBA approval is required if a MESBIC takes a temporary controlling interest in a business it finances; permanent control by a MESBIC is forbidden.

A MESBIC was established in the Washington area in 1972. The "sponsors" of the Washington, D. C. MESBIC are banking institutions in the area.

However, the D. C. MESBIC is controlled by the community. As stated by Justin Bowersock, Chairman of the Board of Union Trust Company:

> The banks preferred to have the management of the MESBIC rest with the minority community, not with the banks. I think it should be clear that the decision as to what loans and investments and so on, this MESBIC would make will not be dictated by the banks.

This is possible since there are two types of stock: class A, for MESBIC's community board members and class B for MESBIC's bank stockholders. The board is composed of nine community members and six banking institution members.

At $10 a share, the Washington community's contribution to the MESBIC was $28,000. The banking institutions hold 16,700 shares, a contribution of $167,000.

Although the Washington, D. C. MESBIC has, at this stage,

limited funding and has not yet made an investment, it is a potential resource for minority businessmen in the District.

District of Columbia Development Bank

A bill creating a District of Columbia Development Bank was introduced before the 92nd Congress by Senator Charles Mathias. The bill died in the House Subcommittee but is expected to be reintroduced in the near future.

The bill is intended "to establish a District of Columbia Development Bank to mobilize the capital and the expertise of the private community to provide for an organized approach to the problems of economic development in the District of Columbia."

Part of the function of the bank would be to evaluate the feasibility of proposed projects, organize the sponsors (who could not finance the project individually), mobilize and combine available resources, and when necessary, provide financing out of its own funds. As stated in a document by the Mayor's Economic Development Committee (MEDCO):

> The bank would be chartered by an Act of Congress but would obtain its capital entirely from private sources. The bank would sell common stock, primarily to D.C. area banks, other financial institutions, and commercial firms, with the aim of raising $10 million. This in turn would generate income to cover administration and operating costs. The bank would play a unique and essential role in pulling together the many separate private, financial elements necessary to get any major development project off the ground. The bank will be able to supply the missing capital and expertise that has prevented so many vital D.C. projects from moving beyond the planning stage to actual development.

Several witnesses at the open meeting were asked if they felt the creation of such a bank would be a positive factor in

the District. The response was affirmative. Michael Wallach of the Business Resource Center said that he though the bank:

> . . . could provide an impetus for private development to come right behind it, because the development bank would then put in substantial equity, and it would also make loans and that would create the snowball effect of coming up with the proper equity. I don't think it would be a panacea, but I think it could increase the development and stimulate growth faster than anything else.

REMEDIES: LEGAL ANALYSIS

What are the legal approaches to the problems of alleged discrimination in lending? Of course, there is little doubt that outright racial discrimination by banks is or ought to be unlawful. But can the bank's lending criteria, the 3-C's of credit, be attacked legally? The question and the answer are twofold: what may be done by private individuals, and what may be done by government agencies?

At the outset we must deal with the factual and legal problem of proving that the banks' lending policies discriminate against blacks or other minorities. The insufficiency or absence of data on race or ethnicity of loan applicants presents a threshold problem. Individual instances of outright, legally provable, racial discrimination by banks appear exceedingly rare. Thus, a claim of discrimination must rest on broader factual grounds, namely a showing that banks deny commercial loans disproportionately to minority businessmen. Yet, banks have not for the most part maintained records showing race or ethnic origin or records showing denials of applications. Thus, such a broad factual showing of discrimination would be extremely difficult at the present time. The responsibility of the banks and Federal agencies to require the collection of such records and data in the future is discussed below.

If such records were available from the banks, it is likely that the banks' lending policies or criteria could be successfully attacked, even if intentional racial discrimination could not be proven. Certain practices or policies may be unlawful if they have a discriminatory effect or impact even if the policy or practice is fair on its face and even if there is no intention to discriminate.

If the banks' lending criteria in fact discriminate against minority loan applicants, it matters little that the banks did not intend to discriminate.

The Supreme Court and other Federal courts in a wide variety of situations have found certain practices unlawful because, although neutral on their face, they discriminate against racial minorities or the poor, or deny certain citizens the equal protection of the law.*

Judge J. Skelly Wright summarized this trend in Hobson v. Hansen:

> The complaint that analytically no violation of equal protection rests unless the inequalities stem from a deliberately discriminatory plan is simply false. Whatever the law once was, it is a testament to our maturing concept of equality that, with the help of Supreme Court decisions in the last decade, we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful schemes. (Footnotes ommitted.)
>
> 269 F. Supp. 401 at 497.

In Griggs v. Duke Power Co. the Supreme Court reviewed the command of Title VII of the 1964 Civil Rights Act:

> The act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.
>
> 401 U.S., at 431.

Griggs is significant for three reasons: First, it applies the effects test to private action. Earlier cases applying the effects

*See Griggs v. Duke Power Co., 401 U.S. 424 (1971); Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); Baker v. Carr, 369 U.S. 186 (1962); Gomillion v. Lightfoot, 364 U.S. 339 (1960); Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), remanded on other grounds, sub. nom. Smuck v. Hobson, 408 F. 2d 175 (D.C. Cir. 1969).

test had all involved state action. Second, the court established that the burden of justification for any practice that has discriminatory effect is "business necessity". Third, once a prima facie showing of discriminatory effect has been made, the burden of showing business necessity is on the party engaging in the practice.

Where the injustices complained of by witnesses at the hearing can be statistically shown to fall more heavily on minority loan applicants, the banks ought to either show business necessity as a justification or change their practices. For example, if application of the 3 C's of credit results in a disproportionate number of minority applicants being denied, that statistical showing shifts the burden to the banks. "/F/igures speak, and when they do, courts listen, . . ." Brooks v. Beto 366 F. 2d 1, 9 (5th Cir. 1966).

Banks should be held to the same standards to which employers are in justifying the use of tests which have a discriminatory impact. If the 3 C's, or any other lending criteria, are built-in obstacles for minority groups and do not genuinely measure, or are unrelated to, a minority applicant's capability to repay a loan, then the criteria ou[illegible]o be reformed.

This approach may also be used to attack other bank policies which may discriminate, such as the practice of using restrictive real estate appraisals in evaluating a loan application. If it can be statistically shown, the Advisory Committee was told, that banks made smaller loans to blacks than whites in high-risk areas, then the banks ought to be required to justify that practice in terms of business necessity.

The Private Right of Action

If a sufficient factual showing could be made as outlined above, it is clear that a private minority businessman denied a loan would have a right of action against the bank, a right to sue the bank and challenge the policies which resulted in the denial. This is so even though the bank may be deemed essentially a private, not a state, entity.

The Civil Rights Act of 1866 (now 42 U.S.C. 1981) provides in part: "All persons within the jurisdiction of the United States shall have the same right to make and enforce contracts . . . as is enjoyed by white citizens . . ." The making of a commercial loan is a contract within the meaning of the statute, and discriminatory lending practices would appear to be clearly prohibited.

It is now clear that this law prohibits discrimination both by private individuals and by governmental entities. In Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), the Supreme Court held that section 1982 (42 U.S.C.), "bars all racial discrimination, private as well as public, in the sale or rental of property." 392 U.S. at 413. Although section 1981 was not at issue in the Jones case, the court observed that section 1981 also bars private as well as public discrimination since both sections 1981 and 1982 were originally enacted together as section I of the Civil Rights Act of 1866. (392 U.S. at 441 n. 78.) Though there has not been a clear holding of the Supreme Court on this point it is now beyond peradventure

that section 1981 prohibits private discriminatory conduct.*

The Responsibilities of Federal Regulatory Agencies

Banks are regulated principally by three Federal agencies: the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (FDIC). What role can these agencies play in assuring nondiscrimination in commercial lending? What do the agencies have power to do, and what are they required to do under the Constitution?

Each of these three agencies supervises the activities and regularly conducts examinations of banks within its jurisdiction. The Comptroller of the Currency charters and supervises the national banks. The Federal Reserve System through its Board of Governors supervises all banks which are members of the system including all national and most state-chartered banks. The FDIC has responsibility over all banks insured by it, including all members of the Federal Reserve System and thousands of insured non-members of the Federal Reserve System. (For a fuller description of this Federal regulatory network see U. S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort (1970) at pp. 507-510.)

The most clear-cut responsibilities of these agencies in preventing discriminatory practices are imposed by Federal statutes. The statutes

*See Sullivan v. Little Hunting Park, 396 U.S. 299 (1969); Brady v. Bristol-Meyers, Inc., 459 F. 2d 621 (8th Cir. 1972); Young v. International Telephone and Telegraph, 438 F. 2d 757 (3d Cir. 1971); Boudreaux v. Baton Rouge Marine Contracting Co., 437 F. 2d 1011 (5th Cir. 1971); Lee v. Southern Homesites Corp. 444 F. 2d 143 (5th Cor. 1971); Sanders v. Dobbs House, 431 F. 2d 1097 (5th Cir. 1970); Waters v. Wisconsin Steel Workers of International Harvester Co., 427 F. 2d 476 (7th Cir. 1970).

(12 U.S.C. 1818) provide that if any bank insured by FDIC is violating a law, the FDIC may, after appropriate proceedings, terminate the bank's insurance, or any of the three agencies may institute cease-and-desist proceedings enforceable in Federal court. If FDIC terminates a bank's insurance the bank loses membership in the Federal Reserve System, and if it is a national bank it must be placed in receivership by the Comptroller of the Currency.

Thus, the Federal banking agencies have the clear power to literally put a bank out of business if the bank persists in unlawful conduct Although 42 U.S.C. 1981 makes discrimination in lending unlawful, to date the Advisory Committee is not aware of any instance where action has been taken against a bank for violation of section 1981.

The question remains whether these banking agencies have more extensive civil rights responsibilities apart from the commands of specific statutes. The U. S. Commission on Civil Rights has concluded that Federal regulatory agencies (including FDIC, the Federal Reserve System, and the Comptroller of the Currency) are under a constitutional obligation to assure nondiscrimination by those they regulate even where there is no statutory requirement.

> Presently, many regulatory agencies are statutorily required to prohibit discrimination in the facilities or services provided by those under their jurisdiction. Under judicial interpretation of the Fifth and Fourteenth Amendments, it also appears that the Constitution imposes a legal obligation upon Federal agencies to assure nondiscrimination in all aspects of the operations of regulated industires and practices, including facilities, services, and employment practices
>
> U. S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort (1970) pp. 1095 - 1096 (Footnote omitted.)

The Fourteenth Amendment prohibits racial or other invidious discrimination by the states, and the Fifth Amendment applies a similar prohibition to the Federal Government. Bolling v. Sharp, 347 U.S. 497 (1954). In Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) the Supreme Court found unlawful under the Fourteenth Amendment discrimination by a private restaurant where the state had become a "joint participant in the challenged activity." 365 U.S. at 725. The state leased space to the restaurant and failed to include a nondiscrimination clause in the lease.

In Simkins v. Moses H. Cone Memorial Hospital, 323 F. 2d 959 (4th Cir. 1963) (en banc), cert. den. 376 U.S. 938 (1964), the Federal court found that the involvement of the Federal Government in partially funding and regulating the hospital made discrimination by this otherwise private entity impermissable. The court stated the question this way:

> In our view the initial question is, rather, whether the state or the Federal Government, or both have become so involved in the conduct of these otherwise private bodies that their activities are also the activities of these governments and performed under their aegis without the private body necessarily becoming either their instrumentality or their agent in a strict sense.
>
> 323 F. 2d at 966.

The court answered the question in the affirmative, thus making the Federal Government responsible for discrimination by the hospital.*

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* See also Smith v. Hampton Training School for Nurses, 360 F. 2d 579 (4th Cir. 1966); Eaton v. Grubbs, 329 F. 2d 712 (4th Cir. 1964); C.f. Smith v. Alright 321 U.S. 649 (1944); Evans v. Newton, 382 U.S. 296 (1966); Public Utilities Commission v. Pollack 393 U.S. 451 (1952).

After an extensive analysis of the law in this area the U. S. Commission on Civil Rights concluded:*

> Based on this analysis of the constitutional prohibitions against racial discrimination contained in the Fifth and Fourteenth Amendments, it appears that Federal regulatory agencies are so closely involved in the practices of the private entities within their jurisdiction as to bring such practices within the scope of the Fifth Amendment. These agencies are therefore constitutionally required to make efforts to assure nondiscrimination in the fields they regulate.
>
> U. S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort (1970) p. 1109.

Assuming then that the Federal banking agencies have a duty imposed by the Constitution to assure nondiscrimination by banks, how should this responsibility be discharged? While it would be presumptive to prescribe all that might be done, there are two things which clearly ought to be undertaken by the agencies as initial measures. The first is to issue regulations prohibiting discrimination by race in the making of commercial loans, prohibiting policies which result in discrimination,and prohibiting ancillary discriminatory practices such as minority loan ceilings or special minority loan officers. The second is to require the banks to provide racial or ethnic data for all loan applicants and to provide records of loans which are denied.

The Federal agencies have a legal obligation to institute nondiscrimination regulations, because to fail to do so implicates the

*For a more detailed discussion of this area of the law see U. S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort (1970) pp. 1095-1109.

agency in any discrimination which does take place. In Burton v. Wilmington Parking Authority, supra, the court specifically condemned the state's failure to include a nondiscrimination clause in the lease: "/b/y its inaction . . . the state has . . . made itself a party to the refusal of service" (365 U. S. at 725). It is indeed surprising that comprehensive regulations covering nondiscrimination in commercial lending have not been adopted. The Commission has previously taken the position that such regulations are constitutionally required. (U. S. Commission on Civil Rights Federal Civil Rights Enforcement Effort (1970) p. 1107).

In order to enforce any such regulations and in order for the Federal banking agencies to determine whether banks are violating Federal statutes (e.g., 42 U.S.C. 1981, discussed above) it will be absolutely necessary to collect data from banks concerning the race or ethnic origin of all loan applicants and to have a racial breakdown of applications denied, along with other supporting data. Without this there is little likelihood that even the most systematic discrimination will be provable. As the Commission previously observed with respect to mortgage loans:

> If the institutions are required to maintain adequate records on all mortgage loan applications, not merely those which have been approved, examiners would have little difficulty in uncovering patterns or practices of discrimination, and appropriate corrective action could be taken.
>
> U. S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort, (1970) p. 513.

Certainly the same is true for commercial loan applications.

The Small Business Administration

The SBA insures certain interest-bearing loans made by banks to minority businesses. As a result they too are in a position of close involvement including a degree of supervision over the lending banks. Should not the SBA also be held responsible for assuring non-discrimination on the part of the banks?

Title VI of the Civil Rights Act of 1964 requires each Federal agency to enforce nondiscrimination in all federally assisted programs except where the assistance is in the form of a "contract of insurance or guaranty." (42 U.S.C. 2000 d, d-1.) There is no question that SBA loan guarantees are within the exception to Title VI. Thus, the SBA has issued regulations which cover SBA programs where direct financial assistance is given (31 C.F.R. 112, 113), but the regulations do not cover banks where the only assistance is the insurance of the loan. Presumably, this is because of the exception written into Title VI.

The question then becomes, did Congress intend to forbid SBA and other agencies providing loan insurance from attempting to assure non-discrimination by banking institutions? It is not unreasonable that Congress may have intended to keep agencies not specializing in bank regulation from attempting to regulate in this technical and specialized field. After all, should not the three Federal banking agencies bear the responsibility in this area?

On the other hand, Title VI does not by its terms forbid SBA to regulate in this area, it merely excepts SBA from the command to do so:

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. ...
>
> 42 U.S.C. 200 d-1.

The obligation to assure nondiscrimination by recipients of Federal assistance is constitutional in nature and stands on a higher level than statutory requirements. Thus, the power of Congress to limit the constitutional responsibility of a Federal agency is certainly in question if Title VI is interpreted as forbidding SBA from issuing regulations to assure nondiscrimination by banks participating in its programs. This is particularly so in light of the fact that none of the banking agencies have undertaken to issue such regulations.

We agree with the Commission's conclusion:

> Thus, programs of insurance and guarantee involve the Federal Government in a number of significant ways with the lending institution and the loan recipient. In all instances, the administering agency exercises control over the intermediary and beneficiary of the program, in the form of pre-award conditions, periodic reports, and audits. No program of insurance or guarantee involves only a financial commitment by the Federal Government. Rather, there is always some control over the purpose and quality of the project for which the loan is used. Furthermore, programs of insurance and guarantee have been a major stimulus to areas such as housing construction, development of rural areas, private entrepreneurship, and higher education. They have had a direct impact on American economic and social development.

> This involvement of the Federal Government is extensive enough to make applicable the Fifth Amendment's prohibition against discrimination in any aspect of a program of insurance or guarantee, under judicial interpretation of this constitutional provision. Following the reasoning of the Court in Burton that a state cannot abdicate its responsibility to guarantee nondiscrimination by ignoring that duty, it is clear that Federal agencies are under an obligation to assure nondiscrimination by intermediaries or beneficiaries in connection with programs of insurance and guarantee.

Department of the Treasury, Bureau of Accounts

In passing,it should be noted that deposits of Federal funds in thousands of banks throughout the United States,and particularly in the District of Columbia,are governed by contracts of deposit. The Department of the Treasury may incorporate certain conditions or requirements into the contract of deposit and has already done so by its regulation (31 C.F.R. 202). That regulation requires that the contract of deposit incorporate the terms of Executive Order 11246 which requires nondiscrimination in employment by the contractor, the bank. Violation of the contract may lead to withdrawal of Federal funds, a significant sanction,particularly in the District of Columbia.

The Department of the Treasury, no less than any other Federal agency, is obliged to assure nondiscrimination by those with whom it deals extensively. This applies to all areas of the bank's operation, not just to its employment practices. It would appear that the Department of the Treasury could play a beneficial role by requiring nondiscrimination in commercial lending as well as all other areas of bank operation as part of the contract of deposit for Federal monies.

FINDINGS AND RECOMMENDATIONS

This study was conducted to determine whether or to what extent minority businessmen received unequal treatment by financial institutions in the District of Columbia because of race. The hearing also explored the roles of government-sponsored loan programs (primarily the Small Business Administration) in alleviating some of the financial problems of minority businessmen.

The findings of District of Columbia Advisory Committee are:

1. Minority businessmen and representatives from technical assistance organizations in the District of Columbia generally believe that banks:

   a. Maintain a minority business portfolio.
   b. Assign one person to administer this portfolio.
   c. Assign a dollar amount to the portfolio above which it will not invest.

2. While most banks deny these allegations, some banks admitted the existence of a ceiling on "high risk" loans. Banks also admitted that SBA guaranteed loans were considered high risk loans, and that most small minority business loans were guaranteed by SBA. Thus,we conclude that the beliefs referred to above are supported by some evidence and testimony adduced at the open meeting

3. Although we conclude that some banks in the District of Columbia operate in a manner that has the effect of discriminating against minority group members, we do not conclude that loans or other banking services are denied solely because of race, creed, color or sex of the applicant. The banks' traditional tests of financial ability often do the job of discriminating against minority group members.

4. The traditional test of financial ability (character, capacity and credit) may have a distinct cultural bias that dictates the rejections of minority applicants. Just as many educational achievement and employment tests developed and validated for the white majority population have been attacked as invalid for testing minority persons, so the 3-C's test of financial ability may be invalid as applied to minority businessmen.

5. A large percentage of minority businessmen in the District of Columbia find it necessary to obtain SBA guarantees. Although this practice limits the exposure of the bank, it does not create a positive customer-client relationship between the borrower and the bank. In fact, it may serve as an impediment to receiving further financing. As stated at the open meeting, "If the Small Business Administration is on your balance sheet on the liability side, either with a direct loan or guarantee, it's next to impossible to garner any additional financing until they are paid out."

6. Federal agencies have the authority and the responsibility to regulate, investigate, and monitor financial institutions in this area. However, neither the District of Columbia Government, nor the Federal Reserve System, or other Federal agencies having jurisdiction over this matter have exercised any regulatory authority.

In light of the above, the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights offers the following recommendations:

1. That the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Small Business Adminstration immediately cause to be issued regulations to assure against discrimination in commercial lending on the

basis of race, sex, creed, color, religion,or national origin. The Committee further recommends that individuals and organizations petition these regulatory agencies to issue such regulations. An example of such a petition appears in the Appendix.

2. That the Federal Deposit Insurance Corporation, the Federal Reserve System, the Comptroller of the Currency,and the Small Business Administration require by regulation or otherwise that banks within their jurisdiction,or participating in their programs, collect and provide data concerning the race, sex, creed, color, religion,and national origin of commercial loan applicants and other data sufficient to determine whether there is discrimination in lending to minority businessmen.

3. That banks and financial institutions, either on their own volition or in concert with organizations in the District of Columbia, examine the new community involvement models being developed by banks in such cities as Denver and Chicago as prototypes for their development in the District of Columbia.

4. That all banks institute an internal system of appeals and review for business loan application rejections.

5. That banks and financial institutions, in consultation with technical assistance firms, review the application of the 3 C's of credit with regard to minority businessmen.

6. That Congress pass the District of Columbia Bank Act which the Committee feels will increase the availability of technical and monetary resources to minority businessmen in the District.

7. That the Department of the Treasury, Bureau of Accounts consider the advisability of revising its regulation 31 C.F.R. 202 to incorporate a nondiscrimination provision covering all bank services and practices into the contract of deposit for Federal funds.

APPENDICES

PETITION FOR REGULATIONS
PROHIBITING DISCRIMINATION
BY BANKS IN THE CONDUCT OF
BUSINESS

Petitioners request that the Board of Governors of the Federal Reserve/FDIC/Comptroller of the Currency issue a regulation expressly prohibiting discrimination on the basis of race, sex, creed, color, religion, or national origin in the conduct of all business by their regulatees; the discrimination prohibited shall include, (1) the denial of services, (2) the provision of services in a different manner and ,(3) otherwise offering services in a manner which exclude or discriminates against particular individuals on the basis of race, sex, creed, color, religion, or national origin, and making violations of said regulations subject to the sanctions provided in 12 U.S.C. 1818 (1969).

In implementation of this requirement of nondiscrimination, petitioners also request the Board of Governors of the Federal Reserve FDIC/Comptroller of the Currency to issue regulations requiring that each regulated financial institution:

A. Keep on file a record of all loan applications, specifying the following:

1. race, sex, color ,or minority group identification of each applicant,
2. date of the application,
3. date of the decision with respect to the loan,

4. if the application is disapproved, the reasons therefore,

5. the character and location of the business or property concerned, surrounding properties, and general neighborhood in which the property is located, including racial and economic characteristics of the area and such other information as the board may determine is relevant.

B. Maintain a written log of oral inquiries about loans which are made in person, but do not result in a written application, such log to indicate the date upon which each inquiry was made, the nature of the inquiry; the name and address, and the race, sex, color, or minority group identification of the person making inquiry.

C. Publish and post a clear statement of the standards and criteria which the financial institution uses in reviewing and deciding on loan applications.

D. Take affirmative action to inform customers and potential customers of its nondiscrimination lending policies by means including but not limited to: prominently posting a notice in its lobby, and including in its brochures and other advertising material a statement that the institution does not discriminate in commercial lending, that any such discrimination is in violation of the Constitution and laws of the United States, and that if any applicant for a commercial loan encounters such discrimination, a complaint may be filed by writing to the Board of Governors of the Federal Reserve/FDIC/ Comptroller of the Currency, stating the facts upon which the allegations of a discriminatory practice are based; advertising the

availability of its commercial loan services in media (press, radio, t.v., etc.) with demonstrated impact on the minority market; establishing working relationships with brokers and other agents who serve members of minority groups.

To assure that the regulated financial institutions comply with the above regulations, petitioners further request that the Board of Governors of the Federal Reserve/FDIC/Comptroller of the Currency take the following steps:

1. Develop the necessary procedures and forms for use in periodic reporting to determine whether the financial institutions are complying with the Federal laws and the rules and regulations of the Board/Corporation/Comptroller in this area.

2. Develop a national data collection system covering all aspects of individual bank, regional, and national commercial lending practices. Such data would be used for comparative analysis of lending practices in the several regions for the purpose of assessing the impact of programs designed to insure compliance with the law.

Periodic reports should be compiled which will permit such comparative analysis, the reports to be made available to the public at cost. Examination of the data utilized in compiling the reports is to be permitted subject only to appropriate conditions necessary to protect the right to privacy.

3. Undertake immediately to determine how current practices and procedures in granting or processing loans should be revised to eliminate impediments to commercial loans by members of minority groups.

This determination shall include an investigation of whether the availability of credit to minority groups is being restricted by practices which are not discriminatory on their face but which may have a discriminatory impact, such investigation to include: restrictive eligibility standards, e.g. undifferentiated application of traditional credit criteria, the use of a criminal record as an absolute disqualification; restrictive real property appraisals, e.g. underappraisals of property in minority or racially mixed neighborhoods resulting in lower loan/market value ratios; or to other restrictive practices, e.g. assignment to SBA of an applicant who is capable of taking a loan or his own credit without government guarantees.

A report shall be completed within three months and published, with recommendations and a statement of the steps that will be taken to implement them.

4. Develop an in-service training program for officials of lending institutions directed toward informing them of their responsibilities under the Constitution and Laws of the United States, including regulations issued by the Board, and toward improving their capacity to serve members of minority groups.

Petitioners request that the Board, because of the public importance of this petition, hold a hearing on the above requests for rule making.

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

October 7, 1972

Mr. Robert K. Koontz, Jr.,
President
Security National Bank
3000 M Street, N.W.
Washington, D. C. 20036

Dear Mr. Koontz:

Thank you for consenting to appear as a participant in the Washington, D. C. Committee Open Hearing on Friday, October 12, 1972.

We have outlined some of the general, as well as the specific questions that the Committee will pose to you or your representative. Some of the questions are as follows:

1. What are the number and volume of loans made by your bank to minority businessmen in the District of Columbia during the last calendar or fiscal year?

2. What are the percentage of deposits and dollar value of deposits that are owned by minority citizens? How many of your depositors are minority-group members?

3. How much or what percentage of your deposits are from the Federal Government of the Government of the District of Columbia?

4. What do you consider to be the proper role of your bank in facilitating minority economic development in the District of Columbia?

5. What do you do to help minorities process their loans?

6. Are there technical considerations which restrain banks from making more loans to minority businessmen; i.e., debt-equity ratio?

7. Are there technical considerations which hinder participation in SBA loan guarantee programs? If so, what are they and how do they adversely affect participation?

8. What in your view could be done to insure better minority participation in business in the District of Columbia.

9. How do you assure in your management process that your employees are affording equal treatment to loan applicants without regard to race or color?

10. In light of your perception of minority business development and the technical and other constraints involved in making loans to minority businessmen, can the traditional banking and financial institutions meet the needs for capital of minority businessmen?

11. If the answer to the above question is no, would you favor the development of an urban development bank for the District of Columbia?

We look forward to meeting with you.

Sincerely,

ROY LITTLEJOHN, Chairman
D. C. Committee to the U. S.
Commission on Civil Rights

UNITED STATES COMMISSION ON CIVIL RIGHTS

MID-ATLANTIC FIELD OFFICE
1405 Eye Street, NW
Washington, D. C. 20425
Telephone: (202) 382-2631

September 29, 1972

Mr. John M. Christie, President
The Riggs National Bank
1503 Pennsylvania Ave., N.W.
Washington, D.C. 20013

Dear Mr. Christie:

The Washington, D. C. Committee to the U. S. Commission on Civil Rights is charged with the responsibility for collecting information on civil rights in the Washington, D.C. area. One of the means employed by the Committee is the Open Hearing to which public officials and private citizens are invited to meet with the Committee and present information in their field of competence.

The Washington, D.C. Committee to the U. S. Commission on Civil Rights will hold a two-day Open Hearing to study whether or to what extent minority businessmen are denied loans or loan guarantees by the traditional money markets because of patterns or practices that tend to discriminate because of race. The hearing will take place on Thursday, October 12 from 10:00 a.m. until 6:30 p.m. and Friday, October 13 from 10:00 a.m. until 5:30 p.m. at the City Council Chambers in the District Building, 14th and E Sts. N.W.

An invitation is hereby extended to you or your designee to meet with the Committee on Friday, August 13 at 11:30 a.m. to present information and respond to questions concerning the role of The Riggs National Bank in supplying capital and short or long term loans to prospective entrepreneurs in the District of Columbia. We are particularly interested in the criteria for making loans and setting requirements for loan guarantees. The Committee is also interested in your participation in the Small Business Administration's loan guarantee program and your involvement with the Economic Development Administration of the Department of Commerce. We would appreciate any written statements or documentation you might have which would be relevant to these concerns.

We believe the information that you will present will be most helpful to the Committee in its study.

If you have any further questions concerning the Committee or the meeting, please contact Ms. Diane Brewer of the staff of the U. S. Commission on Civil Rights at 254-6717.

STATEMENT OF THE RIGGS NATIONAL BANK

TO THE DISTRICT OF COLUMBIA COMMITTEE TO THE U.S. COMMISSION ON

CIVIL RIGHTS

October 13, 1972

The Riggs National Bank has and will continue to take an active role in the extension of credit to minority businessmen in the District of Columbia. A review of our records indicates that we have, during the past four years, made 81 such loans for a total dollar volume of $2,984,000. We believe that this total is understated since many of our loans to minority businessmen are extended to established customers of this bank where no particular effort was made to distinguish those loans from any other business loan. Of the total, 11 loans amounting to $458,500 were extended under 90% Small Business Administration guarantees. Also included in the total is one loan in the amount of $1,000,000 which is guaranteed by a major corporation. We also hold available a mortgage warehousing line of credit of $500,000 to a minority-owned mortgage banking company and a line of credit of $50,000 to a minority-owned consulting firm.

It is the policy and practice of The Riggs National Bank to accept applications for credit from minority businessmen on the same basis as any other application recognizing, of course, that many of those credit requests, particularly in the case of new businesses, will have special circumstances and problems--especially in the areas of prior management experience and ability to secure original risk capital. It is our objective to make sound loans on the basis that we are lending our depositors' money and that extending credit to unqualified individuals or in unusually risky situations is detrimental to all parties to the loan and to the community in general. We must also keep in mind

that of all new businesses established in this country, approximately 50% will fail primarily due to lack of management ability or inadequate capital.

The criteria used in considering applications from minority businessmen are those used in all cases and include the following:

MANAGEMENT-- Does the owner possess management experience in his particular business or can he obtain management assistance during an adequate training period?

LOCATION-- Has a market survey been made to determine that the products or services offered in the area where the business is located are needed and that the area is financially able to support the business?

CAPITAL-- Has adequate provision been made to supply sufficient capital, recognizing that few new businesses are immediately profitable?

ACCOUNTING-- Has provision been made to secure adequate accounting assistance and tax advice? Are we supplied with proforma statements and cash flow projections prepared with reasonable accuracy?

ESTABLISHED BUSINESSES--We will ask that we be supplied with financial statements prepared in sufficient detail to give us an accurate picture of the past performance of the business and its management.

Where weaknesses appear in one or more of these criteria, it is often possible to cure those weaknesses. In the case of lack of management experience, and particularly in buy-out situations, it is sometimes possible to arrange for either outside management assistance or to secure the services of the former owner of a business for a specified period of time. In the case of inadequate capital investment by the owner of a business, it is in some instances possible to disregard this weakness and make a working capital loan guaranteed by the Small Business Administration or the Economic Development Administration. In many cases, a minority businessman is not able to properly prepare a loan application for submission to a bank, and we are particularly impressed by the services offered to those businessmen by several organizations in the District of Columbia. We have had loan packages presented to us by representatives of the Anacostia Economic Development Corporation, the Interracial Council for Business Opportunity, the Washington Business Development Center and the Washington Council for Equal Business Opportunity. These organizations are staffed by people with a great deal of financial expertise and we do not hesitate to refer applicants to them for guidance in the preparation of a loan application and for continuing assistance after a business is established.

Other items of interest indicating the involvement of The Riggs National Bank in the affairs of this community are as follows. We have assisted in providing low-cost and middle-priced housing and new medical facilities by providing construction loans for both new construction and the rehabilitation of dwelling units under FHA programs in the District of Columbia. At this time, we have projects of this sort on our books with a total dollar figure in excess of $56,000,000. We are presently providing quarters for a minority-owned federal credit union in a building owned by us at no cost to the credit union. That space was also refurbished at our expense. We also offer loans to the medical students

at Howard University which loans are guaranteed by the American Medical Association. Those loans currently number 176 for a dollar value of $435,500. It is hoped that a number of those students will elect to go into practice in this area. In the field of providing investment capital to minority-owned businesses, The Riggs National Bank is the largest single investor in Minority Investment, Inc., holding 31% of the class B stock. An officer of our bank serves as a director of that organization and as a member of their investment committee. The Riggs National Bank also participates in the District of Columbia Student Loan Insurance Program and, we have to date committed loans in the aggregate of $7,052,000, which is 40.5% of the total amount committed.

It is our belief that the establishment of successful minority-owned businesses in the District of Columbia will be beneficial to this community and, where it is possible, we intend to be of assistance to minority-owned businessmen.

NATIONAL SAVINGS AND TRUST COMPANY

CHARTERED BY A SPECIAL ACT OF CONGRESS 1867

WASHINGTON, D. C. 20005

AREA CODE 202
TELEPHONE: 659-5900
CABLE: NATIONAL WASHINGTON

HARRY W. SIPE
VICE PRESIDENT

October 18, 1972

Mr. Roy Littlejohn, Chairman
D. C. Committee to the U. S. Commission on Civil Rights
1405 Eye Street, N. W.
Washington, D. C. 20425

Dear Mr. Littlejohn:

Thank you for inviting this Bank to be a participant in the Open Hearing conducted by your Committee on the subject of Bank Loans to Minority Businessmen.

Your record will reflect that there were representatives from this Bank present at the October 13, 1972 session at the appointed hour of 11:30A.M. You will recall that they were excused by you at the lunch break with the understanding that your Committee would be furnished with certain data on the subject at hand and that is the purpose of this letter.

Although is is not the practice of this Bank to record information regarding minority customers, the following information has been obtained to the best of our ability which we trust will be useful for your purpose.

In the area of Federal deposits, our records indicate that such deposits total approximately $4,000,000. or 1.5 per cent of our total deposits. However, approximately one-half of the $4,000,000. is in the Tax and Loan account and consists of withheld taxes deposited by customers of this Bank.

With regards to the S.B.A. loan guarantee program, we have presently on our books five (5) such loans which aggregated approximately $226,000. when set and presently with an outstanding balance of approximately $150,000. Two of these loans aggregating $80,000. are in serious trouble

and may have to be charged off in the near future.

There are an undeterminable number of loans on our books which were made to minority individuals who used the proceeds of the loans for business purposes.

As best as we can determine, we presently have twenty-one (21) loans that are readily identifiable as loans to minority businessmen aggregating roughly $150,000. These loans are scattered throughout our system and not under the control of any one office or officer. We would also like to point out that eight (8) of our ten (10) offices are located in Northwest Washington which may account for a smaller volume of minority business loans than reported by some of the other banks whose branches are scattered throughout the District. The reasoning behind this being that the businessman would tend to seek his loan from the bank in his immediate neighborhood where he maintains his business account. It would seem to be a reasonable assumption that the bulk of the minority businesses are located outside of Northwest Washington.

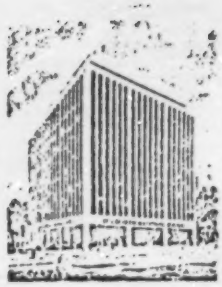
Although mortgage loans are not being considered as part of this Hearing, we wish to state that we make many loans secured by property located in the District of Columbia without consideration of race, color or creed of the borrower.

Please be assured that we have not set any limitations on the number of loans or dollar volume that this Bank will extend to minority businessmen which was a question your Committee posed to each Bank participant who appeared before them.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Vice President



McLACHLEN NATIONAL BANK

Since 1891

11TH AND G STREETS · NORTHWEST · WASHINGTON · D · C · 200

October 4, 1972

United States Commission on Civil Rights
1405 Eye Street N. W.
Washington, D. C. 20425

Attention: Mr. Roy Littlejohn, Chairman, D. C. Committee

Dear Mr. Littlejohn:

Statement of McLachlen National Bank regarding whether or to what extent minority businessmen are denied loans or loan guarantees by this bank because of patterns or practices that tend to discriminate because of race.

This Bank's criteria for making these loans and setting requirements for loan guarantees has been the same for all entrepreneurs and are basically:

1. That the applicant has the necessary knowledge and background for the proposed business.

2. That the applicant has appropriate capital base.

3. That the applicant possesses proper mental and moral persuasion to succeed and has the character, capacity and perseverance to deal with the problems he has to face in operating the business -- as any other businessman.

We have been most cooperative with the Small Business Administration loan guaranty program, as well as involved with the Economic Development Administration of the Department of Commerce. I believe the record will speak fo itself on these matters.

Notice of this hearing has not allowed sufficient time to present documentation, but in proportion to our size, we have been extremely active in this field of lending - going back to 1968.

McLACHLEN NATIONAL BANK
CONTINUATION SHEET

We have had some notable successes and some notable failures. We have learned from both and feel we are better prepared to serve this type of loan than before.

In this community of ours today, and the changing patterns that exist, we believe we serve the need to the best of our ability without discrimination.

Yours very truly,

Thomas P. McLachlen
President

M/h

[SBA] LOANS APPROVED TO SPANISH AMERICANS AND BLACKS

JUNE 1972

(DOLLARS IN MILLIONS)

		TOTAL LOANS	TOTAL MINORITY LOANS	MINORITY % OF TOTAL	SPANISH AMERICAN			BLACK		
					LOANS	% OF TOTAL LOANS	% OF TOTAL MINORITY	LOANS	% OF TOTAL LOANS	% OF TOTAL MINORITY
Calendar Year 1970	#	17,425	6,741	39%	2,003	11%	30%	4,178	24%	62%
	$	$864.4	$176.2	20%	$40.9	5%	23%	$115.3	13%	65%
Calendar Year 1971	#	24,286	8,387	35%	2,921	12%	35%	4,573	19%	55%
	$	$1,291.1	$231.0	18%	$65.8	5%	28%	$135.0	10%	58%
Calendar Year 1972*	#	16,106	5,048	31%	1,773	11%	35%	2,531	16%	50%
	$	$930.1	$150.9	16%	$44.7	5%	30%	$85.2	9%	56%
Fiscal Year 1970	#	15,102	6,262	41%	1,717	11%	27%	4,083	27%	65%
	$	$709.6	$160.4	23%	36.2	5%	23%	$107.6	15%	67%
Fiscal Year 1971	#	21,494	7,776	36%	2,570	12%	33%	4,518	21%	58%
	$	$1,122.2	$213.8	19%	$57.8	5%	27%	$127.5	11%	60%
Fiscal Year 1972	#	28,025	9,016	32%	3,158	11%	35%	4,617	16%	51%
	$	$1,573.8	$258.2	16%	$74.5	5%	29%	$149.8	10%	58%

* AS OF JUNE 1972

SBA LOANS APPROVED TO SPANISH AMERICANS AND BLACKS

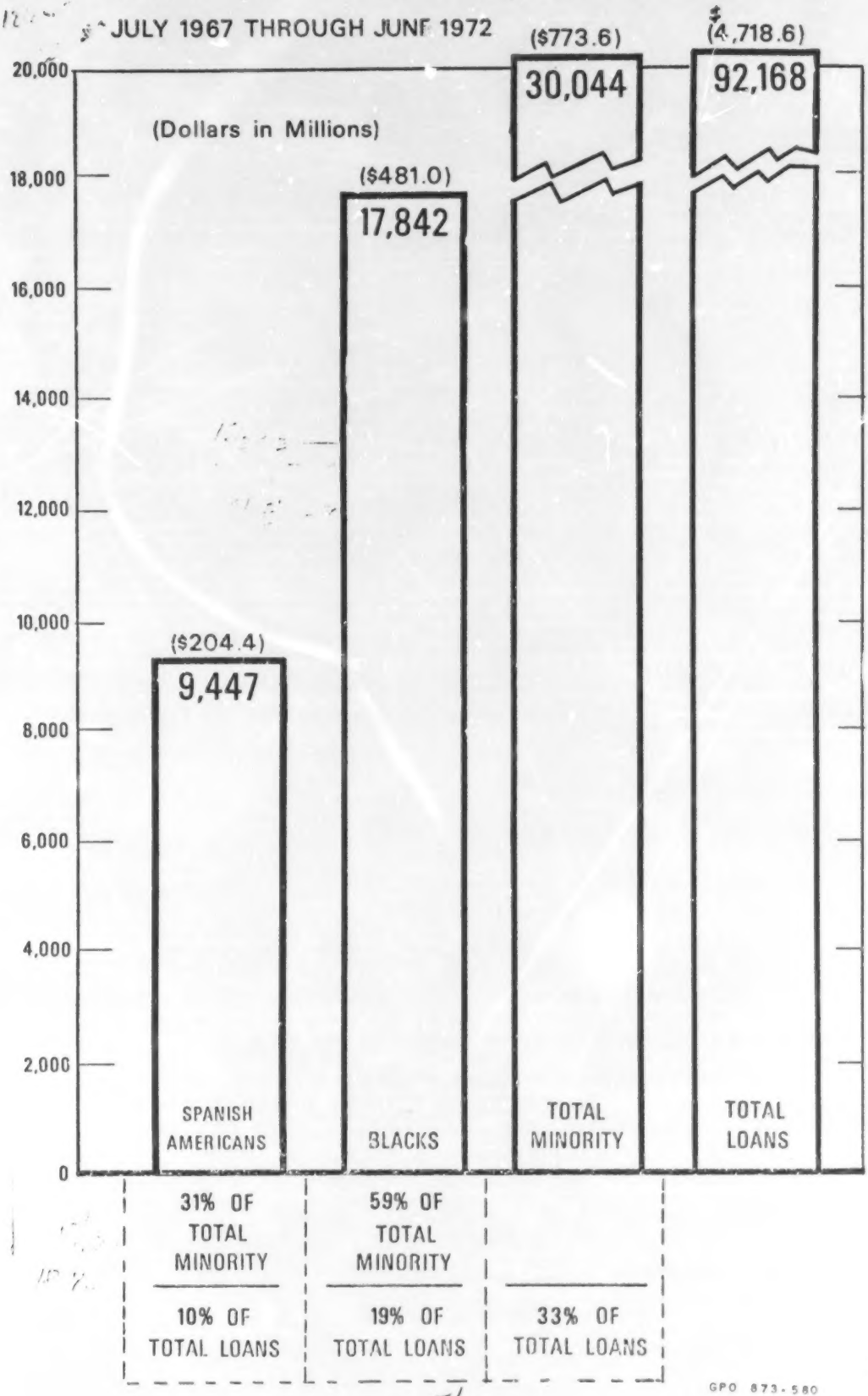
JUNE 1972

Calendar Year 1972 (JANUARY - JUNE)

(DOLLARS IN MILLIONS)					SPANISH AMERICAN			BLACK		
MONTH		TOTAL LOANS	TOTAL MINORITY LOANS	% OF TOTAL LOANS	LOANS	% OF TOTAL LOANS	% OF TOTAL MINORITY	LOANS	% OF TOTAL LOANS	% OF TOTAL MINORITY
JAN	#	2,112	646	31%	196	9%	30%	320	15%	50%
	$	$115.0	$19.7	17%	$6.9	6%	35%	$10.4	9%	53%
FEB	#	2,254	763	34%	260	12%	34%	397	18%	52%
	$	$124.7	$19.4	16%	$6.0	5%	31%	$11.5	9%	59%
MAR	#	2,974	934	31%	347	12%	37%	451	15%	48%
	$	$172.0	$27.2	16%	$7.5	4%	28%	$15.7	9%	58%
APR	#	2,797	746	27%	275	10%	37%	369	13%	49%
	$	$171.4	$20.7	12%	$6.0	4%	29%	$11.1	6%	54%
MAY	#	2,878	891	31%	304	11%	34%	467	16%	52%
	$	$166.5	$29.3	18%	$7.8	5%	27%	$16.2	10%	55%
JUN	#	3,091	1,068	35%	391	13%	37%	527	17%	49%
	$	$180.5	$34.6	19%	$10.5	6%	30%	$20.3	11%	59%

TOTAL AND MINORITY LOANS APPROVED (SBA)

JULY 1967 THROUGH JUNE 1972



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